
Coates' Canons Blog: New SOG Bulletin: Ethical Dilemmas in Client Representation for DSS Attorneys in North Carolina

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An attorney who represents a department of social services (DSS) faces a variety of unique ethical challenges when it comes to client representation. Who is the attorney's client? How should the attorney report malfeasance within the agency? A number of factors make these determinations particularly challenging in North Carolina.

First, North Carolina counties use a number of different models to provide legal services to county social services agencies. DSS attorneys in North Carolina may be staff attorneys employed directly by the county DSS or a consolidated human services agency (CHSA), county or assistant county attorneys, special county attorneys for social services (G.S 108A-16), or attorneys in private practice under contract to represent the county DSS or CHSA. The direction and supervision a DSS attorney receives may vary depending on which type of arrangement a county uses to provide legal services.

Second, North Carolina counties use a variety of different organization and governance models for their social services agencies. For example, a DSS attorney might represent a CHSA or a standalone DSS. Depending on the type of agency, the governing board might be an appointed DSS board, an appointed consolidated human services board, or the board of county commissioners (BOCC). Among other things, the organization and governance of the agency the attorney represents may affect a DSS attorney's duties regarding reporting malfeasance and decisions regarding disclosure of confidential information. For example, if a staff attorney needs to report malfeasance to a higher authority within his or her organization, the identity of that "higher authority" may differ depending on whether the agency is a DSS or a CHSA.

Third, in addition to having multiple county-specific social services governance structures and legal services models, North Carolina is one of only a few states where social services programs are administered by counties under the state's supervision. In the majority of states, the *state* directly administers social services programs through a centralized administrative system. Because of the unique supervisory role that the state plays in North Carolina's county-administered social services system, there may be instances in which it is appropriate for a DSS attorney to report client malfeasance to the North Carolina Department of Health and Human Services.

I address all of these issues in more detail in a new bulletin published by the School of Government: "Ethical Dilemmas in Client Representation for DSS Attorneys in North Carolina." The bulletin also deals the following topics, among others:

- How should a DSS attorney proceed if the attorney receives directions from a client representative (including the DSS director) that may conflict with the best interests of the DSS? How should the attorney respond if they see the director, a social worker, or a fellow attorney engaging in unlawful behavior that might harm the agency as a whole?
- How can a DSS attorney help preserve control of attorney-client privilege when communicating with DSS employees in situations where an employee's personal interests may be adverse to the interests of the agency?
- Individuals who deal with DSS attorneys (such as custodial parents in child support enforcement proceedings, caretakers in a termination of parental rights proceeding, or vulnerable adults in need of protective services) may mistakenly believe they are *personally* represented by the attorney. What duty does a DSS attorney have to correct such misunderstandings and clarify the attorney's role?



If you are an attorney who provides legal services to a DSS or a CHSA in North Carolina, this bulletin is intended to help you think through how the Rules of Professional Conduct apply to your unique client relationships. The bulletin may also serve as a helpful resource for DSS directors, CHSA directors, county managers, county commissioners, and DSS or CHS board members who work directly with such attorneys.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-16.pdf
- www.sog.unc.edu/publications/bulletins/ethical-dilemmas-client-representation-dss-attorneys
- www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/index-to-the-rules-of-professional-conduct/